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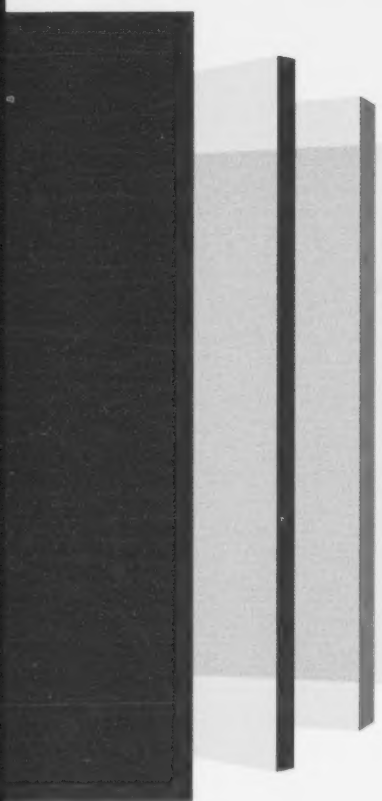

June 2012

Rural Municipality of St. Clements Audit

Vision

That the Office of the Auditor General is an accessible, transparent and independent audit office, serving the Manitoba Legislature with the highest standard of professional excellence.

Mission

To contribute to effective governance by the Manitoba Legislature, we provide the Members of the Legislative Assembly with independent assurance and advice on:

- government accountability information
- compliance with legislative authorities
- the operational performance of government

Values

In interpersonal relationships	In achieving our vision
Respect	Teamwork
Integrity	Independence
Honesty	Professional excellence
Openness	Balanced perspectives

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June 2012

The Honourable Daryl Reid
Speaker of the House
Room 244, Legislative Building
Winnipeg, Manitoba
R3C 0V8

Dear Sir:

It is an honour to provide you with my report titled, *Rural Municipality of St. Clements*, to be laid before Members of the Legislative Assembly in accordance with the provisions of Sections 11 and 28(1) of *The Auditor General Act*.

Respectfully submitted,

Carol Bellringer

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Auditor General

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Main points

What we found

The Rural Municipality of St. Clements (RM) followed the requirements of *The Municipal Act* in completing the construction of a building and RV park in Grand Marais. The RM, however, did not tender for the construction manager of either the building or the RV park, did not prepare a detailed feasibility study and does not have a disposition of assets policy.

Background

The Project

A coalition of citizens approached the Office of the Auditor General (OAG) several times over the past two years with concerns about how the Mayor and Council have been making decisions on several projects in the RM. Although the concerns spanned many projects and decisions made by Council, the OAG reviewed the documentation provided and made a decision to focus on just one project. The project chosen was Destination Grand Marais.

Destination Grand Marais is the name given to a project in the area of Grand Marais, Manitoba. The original project included a visitors' centre building, an RV park and a recreation area. The project in its final form was somewhat scaled down and included the visitors' centre building, the RV park and a public washroom facility. The visitors' centre building includes a heritage component, which provides a history of the area, and three retail store spaces available for lease.

Land trade

We were unable to locate any evidence as to when the idea of a commercial development at Grand Marais was first discussed. The first documentary evidence of the project that we found was a letter from a land owner dated September 13, 2007 that indicated that he would be willing to part with a parcel of his land in a land trade. This is the land on which the visitors' centre building now sits.

In November 2008, an Agreement for Purchase and Sale was signed by both the land owner and the RM. The land owner would receive two parcels of land from the RM as well as $5,000 to cover the legal fees to complete the transactions. A key aspect of the deal was that one of the parcels of land that the RM was trading had a caveat placed on it by the Province of Manitoba when it originally sold the land to the RM. The caveat indicated that the land was to be solely used for the purpose of developing and maintaining a public park and for no other purpose.

On December 21, 2007 the RM sent an email to the Department of Conservation requesting that the caveat be removed from the parcel of land. On June 2, 2008, the RM received a letter from the Department of Conservation stating that the caveat would not be removed.

On November 27, 2008, the RM and the land owner entered into an agreement which stated that if the caveat on the parcel of land had not been removed prior to October 1, 2010 then the RM will pay the land owner $130,000 in place of the land.

Title on the land owner's parcel of land passed to the RM on January 13, 2009. The land has a sworn value of $200,000.

The RM received a letter from the Minister of Conservation dated July 29, 2009 stating that he was prepared to discharge the caveat provided that the RM ensure that unrestricted beach access remained. Subsequently, on December 7, 2010 the RM received a letter from the new Minister of Conservation indicating that the caveat would not be lifted.

The land owner extended the deadline for the caveat to be lifted from October 1, 2010 to August 31, 2011. To date, the caveat has not been lifted and the RM, Province of Manitoba and land owner are working together to find another suitable parcel of land to substitute into the deal. Failing that, the RM will pay the land owner $130,000 as stipulated in the agreement.

Financial plans

The annual Financial Plan includes both the Operating Budget and the Capital Budget. The Capital Budget reflects the amount expected to be spent each year on capital projects, rather than the full project cost.

The first public indication of the Destination Grand Marais Project (the project) was in the 2008 Financial Plan of the RM. The project was listed at $4,500,000 on the Capital Budget and included, the commercial building, the RV park and a recreation area. The project was to be funded with a borrowing of $4,500,000.

When the project next appeared, in the 2009 Capital Budget, it had been significantly scaled down. The project was now listed as the Grand Marais Heritage Centre and had an estimated cost of $640,000. At this point in time the project was now expected to be just the commercial building. Funding for the project was indicated to be $320,000 by grants and $320,000 by borrowings.

The project appears again in the Capital Budget for 2010. It is listed as the Grand Marais Heritage Building and Grand Marais Area Development. Estimated cost now totals $2,418,167 with $1,193,167 borne by grants, $725,000 borne by reserves and $500,000 borne by borrowing. In February 2010, the RM received notice that Western Economic Diversification (WED) would provide $1,426,829 towards the project. The RM then proceeded with the RV park when this funding was confirmed. Without the WED grant, the project would not have had an RV park component.

On the 2011 Capital Budget, the project is listed as Grand Marais Area Development with an estimated cost of $1,346,004 with $712,000 borne by reserves and $634,004 borne by grants/ other.

The project has approximately $136,000 remaining in expenditures for the 2012 fiscal year. We have received a draft copy of the 2012 Capital Budget and the $500,000 does appear as it is expected to be borrowed during the 2012 fiscal year.

Project financing

Destination Grand Marais has a total actual cost of $3,618,518. Funding for this project was derived from the following sources:

Western Economic Diversification Grant (Gov't. of Canada)		$ 1,426,826
Borrowing		500,000
Land Donation		289,719
Work in Kind		305,323
Community Contribution (Hydro Forest Enhancement)		40,000
Recreation Reserve		125,000
Land Sales		600,000
Provincial Grants		
Community Places	$ 40,000	
Build Manitoba Fund	200,000	
Water Stewardship	50,000	
Hometown Manitoba	16,000	306,000
Other RM Contributions		25,650
		$ 3,618,518

The costs were incurred as follows:

2009	$ 639,883
2010	1,460,200
2011	1,381,793
2012	136,642
	$ 3,618,518

Audit approach

Objective

Our objective was to determine whether the Grand Marais project was constructed in accordance with the requirements of *The Municipal Act*.

Scope

Our audit took place between November 2011 and March 2012. We reviewed documentation related to the construction of the Grand Marais project from 2007 to March 2012, including minutes, By-Laws, tender documents and correspondence. Interviews were conducted with RM staff and council members and RM policies were reviewed. We also reviewed in detail the requirements of *The Municipal Act* related to capital projects.

Findings and recommendations

1. No detailed feasibility study was done for the Destination Grand Marais project

We asked the RM's Chief Administrative Officer (CAO) for a copy of the feasibility study that was prepared for the Destination Grand Marais project and we were informed that the RM did not prepare a feasibility study or business plan for the project. During a meeting with the Mayor and CAO to discuss a draft version of this report, we were informed of a feasibility study that was prepared to secure the grant from Western Economic Diversification. This documentation was prepared prior to the current CAO commencing employment with the RM. We were subsequently provided with a copy of this documentation. While the documentation provided to us contains some important information, it is missing some key aspects of a detailed feasibility study.

A feasibility study or business plan of a project of this magnitude would provide the RM with information about the financial viability of the project over a specific time frame and how the RM would be able to pay for the project. We would expect a feasibility study to be a document that would be used throughout a project. The study could include components such as:

- Market/Demographic information.
- Analysis of the current population and how it is expected to change in the future.
- Analysis of Competitors
  - What other similar types of services are available to the population.
- Regulations and Environmental Issues
  - What regulations will affect the project and how will the RM deal with these issues (i.e., sewage disposal at RV park).
- Critical Risk Factors.
- Detailed Financial Projections (5-10 years)
  - Capital Cost Projections.
  - Financing Sources.

The possible consequence of not preparing such a study or plan is that key information could be missed during the planning phase of the project.

Recommendation 1

We recommend that the RM prepare detailed feasibility studies or business plans for projects of this magnitude.

Recommendation 2
We recommend that the Department make feasibility studies mandatory for all RMs for projects of this magnitude.

2. The RM of St. Clements does not have a disposition of assets policy

While the RM did not identify the traded land as land for disposal, there is no requirement in *The Municipal Act* to do so. The Department of Local Government does recommend that RMs have a policy for the disposition of assets, however this is not mandatory. During our review of the RM's policies and procedures we would have expected to see a disposition of assets policy covering land and any other RM owned assets. The RM does not have a documented asset disposal policy.

Recommendation 3
We recommend that the RM develop and implement a disposition of assets policy.

Recommendation 4
We recommend that the Department make disposition of assets policies mandatory for all RMs.

3. Land swap deal was structured to appropriately compensate the land owner in case the caveat could not be lifted

Prior to entering into the agreement with the land owner for the land swap, the Department of Conservation had informed the RM that the caveat would not be lifted. The deal was entered into with a stipulation built in that if the caveat was not removed, the land owner would receive $130,000 in restitution from the RM. The $130,000 amount is the value of the land containing the caveat.

4. Portions of the project were awarded without a competitive bid process

We looked at the awarding of contracts. A project manager was contracted for each of the building and RV portions of the project. The selection of the project manager for each project was not based on any competitive process.

The projects were awarded by the project manager to the lowest bidder. The project managers prepared, issued and evaluated the bids for the projects.

The washroom building part of the project was competitively tendered by the RM with 2 responses. This project was awarded to the lowest bidder.

Recommendation 5
We recommend that construction managers should be tendered to ensure the RM is obtaining the most suitable choice for the project.

5. The RM followed the requirements of *The Municipal Act* during the course of the construction of the Destination Grand Marais project

We reviewed the requirements of *The Municipal Act* to determine whether the RM followed the appropriate procedures during the course of project.

Public meetings on Financial Plans

Section 169(1) of *The Municipal Act* states that the RM may make an expenditure only if it is:

(a) provided for in the council's interim operating budget, operating budget or capital budget;

(b) made in respect of a disaster or emergency declared by council under *The Emergency Measures Act*;

(c) ordered by a court or the Municipal Board to be paid; or

(d) authorized by the council under this section.

The Act also states in Section 162(2) that council must hold a public meeting in respect of the Financial Plan. Public notice of this public meeting must be made in a generally circulated newspaper at least twice in the 40 day period prior to the meeting with at least 6 days between notices (Section 420(1)).

We verified that the Destination Grand Marais project was included as an item in the 2008, 2009, 2010, 2011 and 2012 Capital Plans which were part of the annual financial plans for each of those years. The public meetings to discuss the Financial Plans for the 2008, 2009, 2010, 2011 and 2012 fiscal years were advertised in the local newspaper in accordance with the requirements of *The Municipal Act*.

Borrowing

Section 174 of *The Municipal Act* states that the Municipality may make a borrowing only if it authorized by a by-law and it is set out as debt in the operating budget or capital budget. Additionally, Section 176 says that a Municipality cannot borrow funds unless it obtains the approval of the Municipal Board prior to the third reading of the borrowing by-law.

The RM of St. Clements' By-Law 9-2008 is a by-law to borrow $500,000 to be used toward the project. This by-law was approved by the Municipal Board on October 28, 2008. This was prior to the third reading of the by-law which occurred on November 12, 2008.

Capital Budgeting

Although the project appeared in the Capital Budget each year, it is confusing because it only includes the estimated expenditures for the year in question. It does not indicate the total budgeted cost of the project and costs incurred to date. A document which includes this information would provide more clarity to users.

6. The project approved by the Western Economic Diversification (WED) was downsized at the RM's request with no change in the WED funding received

When the confirmation of the WED grant was received, the RM realized that the project was too big for the financial means that they had available. The original project according to the WED information was $4,822,828. The RM wrote WED to amend the agreement and reduce the size of the project. The amended project is $3,622,551 according to the WED agreement. WED did not reduce their funding amount.

Summary of recommendations and response of officials

General response from the RM of St. Clements

The Rural Municipality of St. Clements (the RM) accepts the comments of the Auditor General.

Transparency and citizen engagement is a priority for this local government. Methods of communication are regularly improved, be it our fully published agendas and background information, web page, quarterly newsletters, newspaper articles or social media, Council attempts to reach out and involve our citizens in the decisions Council makes. Citizens are frequently encouraged to contact our Chief Administrative Officer to gain a more in depth understanding of any issue in the RM. It is important to note that no questions asked by any citizen or citizen group went unanswered.

Recommendation 1

We recommend that the RM prepare detailed feasibility studies or business plans for projects of this magnitude.

Response from the RM of St. Clements

Council has concerns with a blanket statement that feasibility studies must be prepared for projects of this magnitude. The elected local government and the granting authorities should have the discretion to determine if a feasibility study is required and to determine the terms of reference for any particular study. The grantors and Council should ask what factors need to be addressed, is it the feasibility of one project or its impact on the community? How many people would be serviced by a new project and are these needs currently being met? Does the project enhance a sense of community and contribute to a healthier community? Will the project improve the economic condition of the area or prevent further deterioration? A feasibility study that only measures financial cost does not recognize the holistic nature of local government.

Recommendation 2

We recommend that the Department make feasibility studies mandatory for all RMs for projects of this magnitude.

Response from the Department of Local Government

The Department supports the Auditor General's recommendation that all municipalities should be undertaking feasibility studies for capital projects, especially those of significant scale and cost.

It is an expectation that municipalities adopt good business practices and undertake the appropriate due diligence when planning, prioritizing and implementing large scale capital projects. This ensures that public resources are used efficiently and effectively. Most municipalities undertake feasibility studies.

Other existing processes exist that ensure municipalities are giving due regard for the best use of their resources. Existing *Municipal Act* requirements, including requirements for the development of comprehensive local improvement plans and Municipal Board approval of borrowing for capital projects, ensures that municipalities have considered both the short and long-term costs and benefits of implementing capital projects.

As well, municipalities are required to provide detailed project information when applying for funding under provincial programs. In 2011, the Province implemented a new provincial Feasibility Study Grant Program to fund feasibility studies for large scale recreation projects. To date, funding for 4 feasibility studies has been provided.

The Department will examine how to best support municipalities to undertake feasibility studies for large scale capital projects.

Recommendation 3
We recommend that the RM develop and implement a disposition of assets policy.

Response from the RM of St. Clements
Though it is not a requirement of *The Municipal Act*, Council supports, and will be moving forward on the recommendation that the RM develop a disposition of assets policy. This policy would need to consider multiple asset classes. The result would be improved transparency and consistency.

Recommendation 4
We recommend that the Department make disposition of assets policies mandatory for all RMs.

Response from the Department of Local Government
The Department supports the Auditor General's recommendation that all municipalities should establish a disposition of assets policy.

It is an expectation that municipalities adopt good business practices to ensure that municipal resources are used efficiently and effectively. Many municipalities have adopted policies to guide their practices in disposing of surplus land and other assets (e.g., equipment). These policies ensure that practices are transparent, fair, and maximize the revenue to municipalities.

The Department will examine how best to support municipalities to establish a disposition of assets policy.

Recommendation 5

We recommend that construction managers should be tendered to ensure the RM is obtaining the most suitable choice for the project.

Response from the RM of St. Clements

Council has concerns with the need to tender out for construction managers or other professional service providers, such as architects. St. Clements does not have the capacity nor the resources to properly draft and evaluate proposals for these types of services. Long term relationships with professional service providers' offer many benefits, including understanding the policies and past practices of the municipality. Often times the relationship with professional firms exceed the tenure of Chief Administrative Officer and Council, thus providing a valuable link in regards to the long term management of the infrastructure of a municipality. It should also be noted that 1995 Agreement on Internal Trade, MASH Annex 502.4, appendix L specifically exempts services provided by licensed professionals, including engineers, land surveyors, architects, accountants and lawyers.

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